

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
DEARBORN RIVER BASIN (41U)
PRELIMINARY DECREE

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CLAIMANTS: Levine Ranch LLLP

CASE 41U-0096-R-2023

41U 180967-00

41U 180968-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Levine Ranch LLLP (Levine Ranch) is the record owner of claims 41U 180967-00 and 41U 180968-00.

2. Claims 41U 180967-00 and 41U 180968-00 were decreed with the following DNRC issue remarks:

DITCH NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.
IT APPEARS THAT THE RANGE FOR PLACE OF USE ID #7 SHOULD BE 4W INSTEAD OF 4E.

All DNRC issue remarks must be addressed.

3. Claims 41U 180967-00 and 41U 180968-00 were decreed with the following place of use:

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	63.00		S2NW	22	18N	4W	LEWIS AND CLARK
2	80.00		NE	22	18N	4W	LEWIS AND CLARK
3	12.00		N2SW	22	18N	4W	LEWIS AND CLARK
4	65.00		SE	22	18N	4W	LEWIS AND CLARK
5	101.00		SW	23	18N	4W	LEWIS AND CLARK
6	10.00		NENW	26	18N	4W	LEWIS AND CLARK
7	49.00		W2NE	26	18N	4E	LEWIS AND CLARK
Total:	380.00						

Based on the record, and to address the second issue remark decreed on both claims, it appears the following correction should be made to the place of use for both claims:

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	63.00		S2NW	22	18N	4W	LEWIS AND CLARK
2	80.00		NE	22	18N	4W	LEWIS AND CLARK
3	12.00		N2SW	22	18N	4W	LEWIS AND CLARK
4	65.00		SE	22	18N	4W	LEWIS AND CLARK
5	101.00		SW	23	18N	4W	LEWIS AND CLARK
6	10.00		NENW	26	18N	4W	LEWIS AND CLARK
7	49.00		W2NE	26	18N	4W	LEWIS AND CLARK
Total:	380.00						

4. An Order was issued setting a deadline for Levine Ranch to agree or disagree that place of use legal land descriptions for claims 41U 180967-00 and 41U 180968-00 be changed as described in the issue remark. Unfortunately, the February 21, 2023 Order also included an obvious clerical error: this Water Master showed a proposed correction showing the Range for place of use ID no. 7 should be modified to 7W, instead of 4W. The Order stated that if nothing were filed by the deadline, this Master would conclude Levine Ranch agrees the legal land description change should be made to both claims. The Order included the following language:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

Nothing was filed by the deadline.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks decreed on a claim as well as any objections the claim receives. Sections 85-2-233, 85-2-247, and 85-2-248, MCA.

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

3. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.

4. The ditch name issue remark decreed on claims 41U 180967-00 and 41U 180968-00 is a notice-type issue remark. As no objections were filed, no further proceedings are required.

RECOMMENDATIONS

1. Claims 41U 180967-00 and 41U 180968-00 should be modified as shown in Finding of Fact No. 3.

2. The issue remarks should be removed from claims 41U 180967-00 and 41U 180968-00.

Post Decree Abstracts of Water Right Claims are served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Levine Ranch LLLP
9487 MT Highway 200
Wolf Creek, MT 59648-8661

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
DEARBORN RIVER
BASIN 41U**

Water Right Number: 41U 180967-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: LEVINE RANCH LLLP
9487 MT HIGHWAY 200
WOLF CREEK, MT 59648 8661

Priority Date: JUNE 1, 1894

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.63 CFS

Volume: 546.00 AC-FT

Climatic Area: 3 - MODERATE

Maximum Acres: 380.00

Source Name: FLAT CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSWNE	21	18N	4W	LEWIS AND CLARK

Period of Diversion: MAY 15 TO OCTOBER 31

Diversion Means: HEADGATE

Ditch Name: KNUDSON DITCH

2		NWNWNW	21	18N	4W	LEWIS AND CLARK
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Period of Diversion: MAY 15 TO OCTOBER 31

Diversion Means: HEADGATE

Period of Use: MAY 15 TO OCTOBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	63.00		S2NW	22	18N	4W	LEWIS AND CLARK
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3	12.00		N2SW	22	18N	4W	LEWIS AND CLARK
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5	101.00		SW	23	18N	4W	LEWIS AND CLARK
6	10.00		NENW	26	18N	4W	LEWIS AND CLARK
7	49.00		W2NE	26	18N	4W	LEWIS AND CLARK

Total: 380.00

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
DEARBORN RIVER
BASIN 41U**

Water Right Number: 41U 180968-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: LEVINE RANCH LLLP
9487 MT HIGHWAY 200
WOLF CREEK, MT 59648 8661

Priority Date: MAY 15, 1886

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 7.50 CFS

Volume: 1,900.00 AC-FT

Climatic Area: 3 - MODERATE

Maximum Acres: 380.00

Source Name: FLAT CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSWNE	21	18N	4W	LEWIS AND CLARK

Period of Diversion: MAY 15 TO OCTOBER 31

Diversion Means: HEADGATE

Ditch Name: KNUDSON DITCH

2		NWNWNW	21	18N	4W	LEWIS AND CLARK
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Period of Diversion: MAY 15 TO OCTOBER 31

Diversion Means: HEADGATE

Period of Use: MAY 15 TO OCTOBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
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3	12.00		N2SW	22	18N	4W	LEWIS AND CLARK
4	65.00		SE	22	18N	4W	LEWIS AND CLARK
5	101.00		SW	23	18N	4W	LEWIS AND CLARK
6	10.00		NENW	26	18N	4W	LEWIS AND CLARK
7	49.00		W2NE	26	18N	4W	LEWIS AND CLARK

Total: 380.00

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

180968-00

183466-00